

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application for Certificates  
of Need for Three 115 kV Transmission Lines  
in Southwestern Minnesota

ISSUE DATE: December 29, 2006

DOCKET NO. E-002/CN-06-154

ORDER VARYING RULE TO EXTEND  
TIME FOR COMPLETENESS REVIEW

**PROCEDURAL HISTORY**

On April 28, 2006, the Commission issued its ORDER APPROVING NOTICE PLAN AND REQUIRING COMPLIANCE FILING in this proceeding.

On July 24, 2006, the Commission issued its ORDER GRANTING EXEMPTIONS. The Order acknowledged that the primary purpose for two of the three lines at issue was to gain access to wind generated electricity from the Buffalo Ridge area, not to meet a change in demand. The Order approved the Applicant's exemption request, modified to reflect the proposals for additional information recommended by the Department of Commerce and Wind on the Wires.

On December 4, 2006, Xcel Energy (the Applicant) filed a certificate of need application. The three 115 kV transmission projects proposed in the application constitute a large energy facility as defined by Minn. Stat. § 216B.2421, subd. 2 (3).

The matter came before the Commission on December 7, 2006 to consider extending the period for Commission action on completeness of the Certificate of Need application.

**FINDINGS AND CONCLUSIONS**

**I. Variance Required**

Minn. Rules, part 7849.0200, subp. 5 states that the Commission must notify the applicant within 30 days of the receipt of an application if the application is not substantially complete (30-day requirement). For purposes of efficiency and proper record development, a variance from the 30-day requirement is desirable and, as shown by the following analysis, is legally justified in this case.

## **II. Variance Standards**

Minn. Rules, part 7829.3200 provides that the Commission shall grant a variance to a given rule when it determines that the following three conditions are met:

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule.
2. Granting the variance would not adversely affect the public interest.
3. Granting the variance would not conflict with standards imposed by law.

## **III. Commission Analysis**

These three conditions are met in this case. First, enforcement of the rule would impose an excessive burden on the Commission, its staff, and the staff of the Department of Commerce. Since the need application is comparatively long and complicated, comments from the Department of Commerce and other possible intervenors can be helpful to the Commission in determining completeness and a 30-day review period does not allow sufficient time to evaluate the filing and comments, schedule a Commission meeting, and prepare a written order.

Second, the public interest would not be adversely affected by granting this variance. The Applicant would not be negatively impacted by a reasonable extension of the completeness review since the long-term schedule for the proposed project will accommodate such a review period. In fact, the public interest would be advanced because the requested variance will ensure adequate time to solicit and receive comments and properly consider the completeness issues.

Third, the proposed variance does not conflict with any statutory standards. The 30-day decision requirement is established solely by rule (not statute) and is therefore subject to variance pursuant to Minn. Rules, part 7829.3200.

## **IV. Commission Action**

Accordingly, the Commission will vary Minn. Rules, part 7849.0200, subp. 5 to extend the period for Commission action on completeness of the application for an unspecified but reasonable period of time, with the understanding that the meeting to review completeness of the Certificate of Need application will be held as soon as practicable.

### **ORDER**

1. The Commission hereby varies the 30-day requirement imposed by Minn. Rules, part 7849.0200, subp. 5, thereby extending the period for Commission action on completeness of the application for an unspecified but reasonable period of time, as discussed above in the text of this Order.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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